

ELECTRONIC CIGARETTES IN SCHOOLS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses student use of alcohol, tobacco, electronic cigarette products, and other substances through education and prevention programs and discipline policies.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the offense of underage purchase and possession of electronic cigarette products;
- ▶ requires local school boards to adopt discipline policies to address possession and use of electronic cigarette products on school grounds;
- ▶ renames the Underage Drinking Prevention Program the Underage Drinking and Substance Abuse Prevention Program;
- ▶ adds a requirement to teach a school-based prevention program for students in grade 4 or 5;
- ▶ adds a requirement to include education about the risks of electronic cigarette products in a school-based prevention program;
- ▶ requires schools to create a plan to address the causes of student use of tobacco, alcohol, electronic cigarette products, and controlled substances;
- ▶ creates a stipend for a specialist to administer the plan; and
- ▶ requires the state board to establish a library of best practices.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53F-9-304, as last amended by Laws of Utah 2019, Chapter 186

33 **53G-1-103**, as enacted by Laws of Utah 2018, Chapter 3
34 **53G-7-1202**, as last amended by Laws of Utah 2019, Chapters 150, 293, and 505
35 **53G-7-1205**, as last amended by Laws of Utah 2019, Chapters 150, 167, and 293
36 **53G-8-203**, as last amended by Laws of Utah 2019, Chapters 293 and 446
37 **53G-8-209**, as last amended by Laws of Utah 2019, Chapter 293
38 **53G-8-505**, as renumbered and amended by Laws of Utah 2018, Chapter 3
39 **53G-8-508**, as last amended by Laws of Utah 2019, Chapter 293
40 **53G-10-405**, as last amended by Laws of Utah 2019, Chapter 293
41 **53G-10-406**, as last amended by Laws of Utah 2019, Chapter 293
42 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
43 by Coordination Clause, Laws of Utah 2015, Chapter 132
44 **76-10-105 (Superseded 07/01/20)**, as last amended by Laws of Utah 2018, Chapter 415
45 **76-10-105 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

46 ENACTS:

47 **53G-10-407**, Utah Code Annotated 1953

49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **53F-9-304** is amended to read:

51 **53F-9-304. Underage Drinking and Substance Abuse Prevention Program**

52 **Restricted Account.**

53 (1) As used in this section, "account" means the Underage Drinking and Substance
54 Abuse Prevention Program Restricted Account created in this section.

55 (2) There is created within the Education Fund a restricted account known as the
56 "Underage Drinking and Substance Abuse Prevention Program Restricted Account."

57 (3) (a) Before the Department of Alcoholic Beverage Control deposits any portion of
58 the markup collected under Section 32B-2-304 into the Liquor Control Fund in accordance
59 with Section 32B-2-301, the Department of Alcoholic Beverage Control shall deposit into the
60 account:

61 (i) for the fiscal year that begins July 1, 2017, \$1,750,000; or

62 (ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the
63 amount that the Department of Alcoholic Beverage Control deposited into the account during

the preceding fiscal year increased or decreased by a percentage equal to the percentage difference between the Consumer Price Index for the second preceding calendar year and the Consumer Price Index for the preceding calendar year.

(b) For purposes of this Subsection (3), the Department of Alcoholic Beverage Control shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs. 1(f)(4) and 1(f)(5).

(4) The account shall be funded:

(a) in accordance with Subsection (3);

(b) by appropriations made to the account by the Legislature; and

(c) by interest earned on money in the account.

(5) The state board shall use money in the account for the Underage Drinking and Substance Abuse Prevention Program described in Section 53G-10-406.

Section 2. Section **53G-1-103** is amended to read:

53G-1-103. Definitions.

As used in this title:

(1) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.

(2) "Electronic cigarette product" means an electronic cigarette or a prefilled electronic cigarette.

(3) "Prefilled electronic cigarette" means the same as that term is defined in Section 76-10-101.

Section 3. Section **53G-7-1202** is amended to read:

53G-7-1202. School community councils -- Duties -- Composition -- Election procedures and selection of members.

(1) As used in this section:

(a) "Digital citizenship" means the norms of appropriate, responsible, and healthy behavior related to technology use, including digital literacy, ethics, etiquette, and security.

(b) "Educator" means the same as that term is defined in Section 53E-6-102.

(c) (i) "Parent member" means a member of a school community council who is a parent of a student who:

(A) is attending the school; or

(B) will be enrolled at the school during the parent's term of office.

(ii) "Parent member" may not include an educator who is employed at the school.

(d) "Safety principles" means safety principles that, when incorporated into programs and resources, impact academic achievement by strengthening a safe and wholesome learning environment, including continual efforts for safe technology utilization and digital citizenship.

(e) "School community council" means a council established at a district school in accordance with this section.

(f) "School employee member" means a member of a school community council who is a person employed at the school by the school or school district, including the principal.

(g) "School LAND Trust Program money" means money allocated to a school pursuant to Section 53F-2-404.

(2) A district school, in consultation with the district school's local school board, shall establish a school community council at the school building level for the purpose of:

(a) involving parents of students in decision making at the school level;

(b) improving the education of students;

(c) prudently expending School LAND Trust Program money for the improvement of students' education through collaboration among parents, school employees, and the local school board; and

(d) increasing public awareness of:

(i) school trust lands and related land policies;

(ii) management of the State School Fund established in Utah Constitution Article X, Section V; and

(iii) educational excellence.

(3) (a) Except as provided in Subsection (3)(b), a school community council shall:

(i) create the School LAND Trust Program and LAND Trust plan in accordance with Section 53G-7-1206;

(ii) advise and make recommendations to school and school district administrators and the local school board regarding:

(A) the school and its programs;

(B) school district programs;

(C) a child access routing plan in accordance with Section 53G-4-402;

(D) safe technology utilization and digital citizenship; and

- 126 (E) other issues relating to the community environment for students;
- 127 (iii) provide for education and awareness on safe technology utilization and digital
- 128 citizenship that empowers:
- 129 (A) a student to make smart media and online choices; and
- 130 (B) a parent to know how to discuss safe technology use with the parent's child;
- 131 (iv) partner with the school's principal and other administrators to ensure that adequate
- 132 on and off campus Internet filtering is installed and consistently configured to prevent viewing
- 133 of harmful content by students and school personnel, in accordance with local school board
- 134 policy and Subsection 53G-7-216(3); ~~and~~
- 135 (v) in accordance with state board rule regarding school community council
- 136 expenditures and funding limits:
- 137 (A) work with students, families, and educators to develop and incorporate safety
- 138 principles at the school; and
- 139 (B) hold at least an annual discussion with the school's principal and district
- 140 administrators regarding safety principles at the school and district level in order to coordinate
- 141 the school community council's effort to develop and incorporate safety principles at the
- 142 school[-]; and
- 143 (vi) provide input to the school's principal on a positive behaviors plan in accordance
- 144 with Section 53G-10-407.
- 145 (b) To fulfill the school community council's duties described in Subsections (3)(a)(iii)
- 146 and (iv), a school community council may:
- 147 (i) partner with one or more non-profit organizations; or
- 148 (ii) create a subcommittee.
- 149 (c) A school or school district administrator may not prohibit or discourage a school
- 150 community council from discussing issues, or offering advice or recommendations, regarding
- 151 the school and its programs, school district programs, the curriculum, or the community
- 152 environment for students.
- 153 (4) (a) Each school community council shall consist of school employee members and
- 154 parent members in accordance with this section.
- 155 (b) Except as provided in Subsection (4)(c) or (d):
- 156 (i) each school community council for a high school shall have six parent members and

157 four school employee members, including the principal; and

158 (ii) each school community council for a school other than a high school shall have
159 four parent members and two school employee members, including the principal.

160 (c) A school community council may determine the size of the school community
161 council by a majority vote of a quorum of the school community council provided that:

162 (i) the membership includes two or more parent members than the number of school
163 employee members; and

164 (ii) there are at least two school employee members on the school community council.

165 (d) (i) The number of parent members of a school community council who are not
166 educators employed by the school district shall exceed the number of parent members who are
167 educators employed by the school district.

168 (ii) If, after an election, the number of parent members who are not educators employed
169 by the school district does not exceed the number of parent members who are educators
170 employed by the school district, the parent members of the school community council shall
171 appoint one or more parent members to the school community council so that the number of
172 parent members who are not educators employed by the school district exceeds the number of
173 parent members who are educators employed by the school district.

174 (5) (a) Except as provided in Subsection (5)(f), a school employee member, other than
175 the principal, shall be elected by secret ballot by a majority vote of the school employees and
176 serve a two-year term. The principal shall serve as an ex officio member with full voting
177 privileges.

178 (b) (i) Except as provided in Subsection (5)(f), a parent member shall be elected by
179 secret ballot at an election held at the school by a majority vote of those voting at the election
180 and serve a two-year term.

181 (ii) (A) Except as provided in Subsection (5)(b)(ii)(B), only a parent of a student
182 attending the school may vote in, or run as a candidate in, the election under Subsection
183 (5)(b)(i).

184 (B) If an election is held in the spring, a parent of a student who will be attending the
185 school the following school year may vote in, and run as a candidate in, the election under
186 Subsection (5)(b)(i).

187 (iii) Any parent of a student who meets the qualifications of this section may file or

188 declare the parent's candidacy for election to a school community council.

189 (iv) (A) Subject to Subsections (5)(b)(iv)(B) and (5)(b)(iv)(C), a timeline for the
190 election of parent members of a school community council shall be established by a local
191 school board for the schools within the school district.

192 (B) An election for the parent members of a school community council shall be held
193 near the beginning of the school year or held in the spring and completed before the last week
194 of school.

195 (C) Each school shall establish a time period for the election of parent members of a
196 school community council under Subsection (5)(b)(iv)(B) that is consistent for at least a
197 four-year period.

198 (c) (i) At least 10 days before the date that voting commences for the elections held
199 under Subsections (5)(a) and (5)(b), the principal of the school, or the principal's designee,
200 shall provide notice to each school employee or parent of the opportunity to vote in, and run as
201 a candidate in, an election under this Subsection (5).

202 (ii) The notice shall include:

203 (A) the dates and times of the elections;

204 (B) a list of council positions that are up for election; and

205 (C) instructions for becoming a candidate for a community council position.

206 (iii) The principal of the school, or the principal's designee, shall oversee the elections
207 held under Subsections (5)(a) and (5)(b).

208 (iv) Ballots cast in an election held under Subsection (5)(b) shall be deposited in a
209 secure ballot box.

210 (d) Results of the elections held under Subsections (5)(a) and (5)(b) shall be made
211 available to the public upon request.

212 (e) (i) If a parent position on a school community council remains unfilled after an
213 election is held, the other parent members of the council shall appoint a parent who meets the
214 qualifications of this section to fill the position.

215 (ii) If a school employee position on a school community council remains unfilled after
216 an election is held, the other school employee members of the council shall appoint a school
217 employee to fill the position.

218 (iii) A member appointed to a school community council under Subsection (5)(e)(i) or

219 (ii) shall serve a two-year term.

220 (f) (i) If the number of candidates who file for a parent position or school employee
221 position on a school community council is less than or equal to the number of open positions,
222 an election is not required.

223 (ii) If an election is not held pursuant to Subsection (5)(f)(i) and a parent position
224 remains unfilled, the other parent members of the council shall appoint a parent who meets the
225 qualifications of this section to fill the position.

226 (iii) If an election is not held pursuant to Subsection (5)(f)(i) and a school employee
227 position remains unfilled, the other school employee members of the council shall appoint a
228 school employee who meets the qualifications of this section to fill the position.

229 (g) The principal shall enter the names of the council members on the School LAND
230 Trust website on or before October 20 of each year, pursuant to Section 53G-7-1203.

231 (h) Terms shall be staggered so that approximately half of the council members stand
232 for election each year.

233 (i) A school community council member may serve successive terms provided the
234 member continues to meet the definition of a parent member or school employee member as
235 specified in Subsection (1).

236 (j) Each school community council shall elect:

237 (i) a chair from its parent members; and

238 (ii) a vice chair from either its parent members or school employee members,
239 excluding the principal.

240 (6) (a) A school community council may create subcommittees or task forces to:

241 (i) advise or make recommendations to the council; or

242 (ii) develop all or part of a plan listed in Subsection (3).

243 (b) Any plan or part of a plan developed by a subcommittee or task force shall be
244 subject to the approval of the school community council.

245 (c) A school community council may appoint individuals who are not council members
246 to serve on a subcommittee or task force, including parents, school employees, or other
247 community members.

248 (7) (a) A majority of the members of a school community council is a quorum for the
249 transaction of business.

(b) The action of a majority of the members of a quorum is the action of the school community council.

(8) A local school board shall provide training for a school community council each year, including training:

(a) for the chair and vice chair about their responsibilities;

(b) on resources available on the School LAND Trust website; and

(c) on this part.

Section 4. Section **53G-7-1205** is amended to read:

53G-7-1205. Charter trust land councils.

(1) As used in this section, "council" means a charter trust land council described in this section.

(2) To receive School LAND Trust Program funding as described in Sections 53F-2-404 and 53G-7-1206, a charter school governing board shall establish a charter trust land council, which shall prepare a plan for the use of School LAND Trust Program money that includes the elements described in Subsection 53G-7-1206(4).

(3) (a) The membership of the council shall include parents or grandparents of students enrolled at the charter school and may include other members.

(b) The number of council members who are parents or grandparents of students enrolled at the charter school shall exceed all other members combined by at least two.

(4) A charter school governing board may serve as the charter school's council if the membership of the charter school governing board meets the requirements of Subsection (3)(b).

(5) (a) Except as provided in Subsection (5)(b), council members who are parents or grandparents of students enrolled at the school shall be elected in accordance with procedures established by the charter school governing board.

(b) Subsection (5)(a) does not apply to a charter school governing board that serves as a council.

(6) A parent or grandparents of a student enrolled at a charter school shall serve as chair or co-chair of the charter school's council.

(7) In accordance with state board rule regarding charter trust land council expenditures and funding limits, a charter trust land council shall:

(a) work with students, families, and educators to develop and incorporate safety

principles, as defined in Section 53G-7-1202, at the school; and

(b) hold at least an annual discussion with charter school administrators to coordinate efforts to develop and incorporate safety principles, as defined in Section 53G-7-1202, at the school level.

(8) A charter trust land council shall provide input to the school's principal on a positive behaviors plan in accordance with Section 53G-10-407.

Section 5. Section **53G-8-203** is amended to read:

53G-8-203. Conduct and discipline policies and procedures.

(1) The conduct and discipline policies required under Section 53G-8-202 shall include:

(a) provisions governing student conduct, safety, and welfare;

(b) standards and procedures for dealing with students who cause disruption in the classroom, on school grounds, on school vehicles, or in connection with school-related activities or events;

(c) procedures for the development of remedial discipline plans for students who cause a disruption at any of the places referred to in Subsection (1)(b);

(d) procedures for the use of reasonable and necessary physical restraint in dealing with students posing a danger to themselves or others, consistent with Section 53G-8-302;

(e) standards and procedures for dealing with student conduct in locations other than those referred to in Subsection (1)(b), if the conduct threatens harm or does harm to:

(i) the school;

(ii) school property;

(iii) a person associated with the school; or

(iv) property associated with a person described in Subsection (1)(e)(iii);

(f) procedures for the imposition of disciplinary sanctions, including suspension and expulsion;

(g) specific provisions, consistent with Section 53E-3-509, for preventing and responding to gang-related activities in the school, on school grounds, on school vehicles, or in connection with school-related activities or events;

(h) standards and procedures for dealing with habitual disruptive or unsafe student behavior in accordance with the provisions of this part; and

(i) procedures for responding to reports received through the SafeUT Crisis Line under Subsection 53B-17-1202(3).

(2) (a) Each local school board shall establish a policy on detaining students after regular school hours as a part of the district-wide discipline plan required under Section 53G-8-202.

(b) (i) The policy described in Subsection (2)(a) shall apply to elementary school students, grades kindergarten through 6.

(ii) The local school board shall receive input from teachers, school administrators, and parents of the affected students before adopting the policy.

(c) The policy described in Subsection (2)(a) shall provide for:

(i) notice to the parent of a student prior to holding the student after school on a particular day; and

(ii) exceptions to the notice provision if detention is necessary for the student's health or safety.

(3) (a) Each LEA shall adopt a policy for responding to possession or use of electronic cigarette products by a student on school property.

(b) The policy described in Subsection (3)(a) shall:

(i) prohibit students from possessing or using electronic cigarette products on school property;

(ii) include policies or procedures for the confiscation of electronic cigarette products; and

(iii) require school personnel to dispose of or destroy a confiscated electronic cigarette product.

(c) Notwithstanding Subsection (3)(b)(iii), an LEA may release a confiscated electronic cigarette product to local law enforcement if:

(i) a school official has a reasonable suspicion that a confiscated electronic cigarette product contains an illegal substance; and

(ii) local law enforcement requests that the LEA release the confiscated electronic cigarette product to local law enforcement as part of an investigation or action.

Section 6. Section **53G-8-209** is amended to read:

53G-8-209. Extracurricular activities -- Prohibited conduct -- Reporting of

violations -- Limitation of liability.

(1) The Legislature recognizes that:

(a) participation in student government and extracurricular activities may confer important educational and lifetime benefits upon students, and encourages school districts and charter schools to provide a variety of opportunities for all students to participate in such activities in meaningful ways;

(b) there is no constitutional right to participate in these types of activities, and does not through this section or any other provision of law create such a right;

(c) students who participate in student government and extracurricular activities, particularly competitive athletics, and the adult coaches, advisors, and assistants who direct those activities, become role models for others in the school and community;

(d) these individuals often play major roles in establishing standards of acceptable behavior in the school and community, and establishing and maintaining the reputation of the school and the level of community confidence and support afforded the school; and

(e) it is of the utmost importance that those involved in student government, whether as officers or advisors, and those involved in competitive athletics and related activities, whether students or staff, comply with all applicable laws and standards of behavior and conduct themselves at all times in a manner befitting their positions and responsibilities.

(2) (a) The state board may, and local school boards and charter school governing boards shall, adopt rules or policies implementing this section that apply to both students and staff.

(b) The rules or policies described in Subsection (2)(a) shall include prohibitions against the following types of conduct in accordance with Section 53G-8-211, while in the classroom, on school property, during school sponsored activities, or regardless of the location or circumstance, affecting a person or property described in Subsections 53G-8-203(1)(e)(i) through (iv):

(i) use of foul, abusive, or profane language while engaged in school related activities;

(ii) illicit use, possession, or distribution of controlled substances or drug paraphernalia, and the use, possession, or distribution of an electronic cigarette ~~[as defined in Section 76-10-101]~~ product, tobacco, or alcoholic beverages contrary to law; and

(iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including

behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

(3) (a) School employees who reasonably believe that a violation of this section may have occurred shall immediately report that belief to the school principal, district superintendent, or chief administrative officer of a charter school.

(b) Principals who receive a report under Subsection (3)(a) shall submit a report of the alleged incident, and actions taken in response, to the district superintendent or the superintendent's designee within 10 working days after receipt of the report.

(c) Failure of a person holding a professional certificate to report as required under this Subsection (3) constitutes an unprofessional practice.

(4) Limitations of liability set forth under Section 53G-8-405 apply to this section.

Section 7. Section **53G-8-505** is amended to read:

53G-8-505. Definitions.

For purposes of Sections 53G-8-506 through 53G-8-509:

(1) The definitions in Sections 58-37-2, 58-37a-3, and 58-37b-2 apply to Sections 53G-8-506 through 53G-8-509.

(2) "Prohibited act" means:

(a) an act punishable under Section 53G-8-602, Section 58-37-8, Section 58-37a-5, or Title 58, Chapter 37b, Imitation Controlled Substances Act[-]; or

(b) possession of an electronic cigarette product by a student on school property.

(3) "School" means a public or private elementary or secondary school.

Section 8. Section **53G-8-508** is amended to read:

53G-8-508. Admissibility of evidence in civil and criminal actions.

(1) Evidence relating to a violation of Section 53G-8-505, 53G-8-506, 53G-8-507, or 53G-8-509, which is seized by school authorities acting alone, on their own authority, and not in conjunction with or at the behest of law enforcement authorities is admissible in civil and criminal actions.

(2) An LEA shall dispose of or destroy seized electronic cigarette products in accordance with the LEA's policies adopted under Subsection 53G-8-203(3).

~~[(2)]~~ (3) A search under this section must be based on at least a reasonable belief that

the search will turn up evidence of a violation of this part. The measures adopted for the search must be reasonably related to the objectives of the search and not excessively intrusive in light of the circumstances, including the age and sex of the person involved and the nature of the infraction.

Section 9. Section **53G-10-405** is amended to read:

53G-10-405. Instruction on the harmful effects of alcohol, tobacco, electronic cigarette products, and controlled substances -- Rulemaking authority -- Assistance from the Division of Substance Abuse and Mental Health.

(1) The state board shall adopt rules providing for instruction at each grade level on the harmful effects of alcohol, tobacco, electronic cigarette products, and controlled substances upon the human body and society. The rules shall require ~~[but are not limited to]~~ instruction on the following:

(a) teaching of skills needed to evaluate advertisements for, and media portrayal of, alcohol, tobacco, electronic cigarette products, and controlled substances;

(b) directing students towards healthy and productive alternatives to the use of alcohol, tobacco, electronic cigarette products, and controlled substances; and

(c) discouraging the use of alcohol, tobacco, electronic cigarette products, and controlled substances.

(2) At the request of the state board, the Division of Substance Abuse and Mental Health shall cooperate with the state board in developing programs to provide this instruction.

(3) The state board shall participate in efforts to enhance communication among community organizations and state agencies, and shall cooperate with those entities in efforts which are compatible with the purposes of this section.

(4) The state board shall establish a library of documented best practices and resources for alcohol, tobacco, and electronic cigarette product cessation interventions for use by local school districts.

Section 10. Section **53G-10-406** is amended to read:

53G-10-406. Underage Drinking and Substance Abuse Prevention Program -- State board rules.

(1) As used in this section:

(a) "Advisory council" means the Underage Drinking and Substance Abuse Prevention

436 Program Advisory Council created in this section.

437 (b) "Program" means the Underage Drinking and Substance Abuse Prevention Program
438 created in this section.

439 (c) "School-based prevention program" means an evidence-based program [~~intended~~
440 ~~for students aged 13 and older~~] that:

441 (i) is aimed at preventing underage consumption of alcohol and underage use of
442 electronic cigarette products;

443 (ii) is delivered by methods that engage students in storytelling and visualization;

444 (iii) addresses the behavioral risk factors associated with underage drinking and use of
445 electronic cigarette products; and

446 (iv) provides practical tools to address the dangers of underage drinking and use of
447 electronic cigarette products.

448 (2) There is created the Underage Drinking and Substance Abuse Prevention Program
449 that consists of:

450 (a) a school-based prevention program for students in grade 4 or 5;

451 [~~(a)~~] (b) a school-based prevention program for students in grade 7 or 8; and

452 [~~(b)~~] (c) a school-based prevention program for students in grade 9 or 10 that increases
453 awareness of the dangers of driving under the influence of alcohol.

454 (3) (a) Beginning with the 2018-19 school year, an LEA shall offer the program each
455 school year to each student in grade 7 or 8 and grade 9 or 10.

456 (b) In addition to Subsection (3)(a), beginning with the 2020-21 school year, an LEA
457 shall offer the program each school year to each student in grade 4 or 5.

458 [~~(b)~~] (c) An LEA shall select from the providers qualified by the state board under
459 Subsection (6) to offer the program.

460 (4) The state board shall administer the program with input from the advisory council.

461 (5) There is created the Underage Drinking and Substance Abuse Prevention Program
462 Advisory Council comprised of the following members:

463 (a) the executive director of the Department of Alcoholic Beverage Control or the
464 executive director's designee;

465 (b) the executive director of the Department of Health or the executive director's
466 designee;

(c) the director of the Division of Substance Abuse and Mental Health or the director's designee;

(d) the director of the Division of Child and Family Services or the director's designee;

(e) the director of the Division of Juvenile Justice Services or the director's designee;

(f) the state superintendent or the state superintendent's designee; and

(g) two members of the state board, appointed by the chair of the state board.

(6) (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the state board shall qualify one or more providers to provide the program to an LEA.

(b) In selecting a provider described in Subsection (6)(a), the state board shall consider:

(i) whether the provider's program complies with the requirements described in this section;

(ii) the extent to which the provider's ~~underage drinking~~ prevention program aligns with core standards for Utah public schools; and

(iii) the provider's experience in providing a program that is effective~~at reducing~~ ~~underage drinking~~.

(7) (a) The state board shall use money from the Underage Drinking and Substance Abuse Prevention Program Restricted Account described in Section 53F-9-304 for the program.

(b) The state board may use money from the Underage Drinking Prevention Program Restricted Account to fund up to .5 of a full-time equivalent position to administer the program.

(8) The state board shall make rules that:

(a) beginning with the 2018-19 school year, require an LEA to offer the Underage Drinking and Substance Abuse Prevention Program each school year to each student in grade 7 or 8 and grade 9 or 10; ~~and~~

(b) beginning with the 2020-21 school year, require an LEA to offer the Underage Drinking and Substance Abuse Prevention Program each school year to each student in grade 4 or 5; and

~~(b)~~ (c) establish criteria for the state board to use in selecting a provider described in Subsection (6).

Section 11. Section **53G-10-407** is enacted to read:

53G-10-407. Positive behaviors plan -- Positive behaviors specialist stipend --

Reports.

(1) As used in this section:

(a) "Positive behaviors plan" means a plan to address the causes of student use of tobacco, alcohol, electronic cigarette products, and other controlled substances through promoting positive behaviors.

(b) "Positive behaviors specialist" means an individual designated to administer a positive behaviors plan.

(2) (a) A school principal shall:

(i) create a positive behaviors plan based on the input of students, parents, and staff; and

(ii) submit the positive behaviors plan to the LEA governing board for approval.

(b) A positive behaviors plan shall address issues including peer pressure, mental health, and creating meaningful relationships.

(c) A positive behaviors plan may include programs, clubs, service opportunities, and pro-social activities.

(3) Each LEA shall designate one or more employees as a positive behaviors specialist for each school to administer the positive behaviors plan.

(4) (a) The state board shall distribute annually to each school:

(i) \$3,000 as a stipend for the positive behaviors specialists; and

(ii) \$1,000 to administer the positive behaviors plan.

(b) Notwithstanding Subsection (4)(a), if funding is insufficient to cover the costs associated with stipends, the state board may reduce the amount of the stipend.

(5) (a) A positive behaviors specialist shall annually submit a written report to the LEA governing board detailing how the positive behaviors plan was implemented in the prior year.

(b) An LEA governing board shall submit an annual report to the state board confirming that each school under the governing board's jurisdiction has an approved positive behaviors plan.

Section 12. Section **76-10-101** is amended to read:

76-10-101. Definitions.

As used in this part:

(1) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as described in Subsection (2).

(2) "Cigarette" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section 59-14-802.

(4) "Place of business" includes:

- (a) a shop;
- (b) a store;
- (c) a factory;
- (d) a public garage;
- (e) an office;
- (f) a theater;
- (g) a recreation hall;
- (h) a dance hall;
- (i) a poolroom;
- (j) a café;
- (k) a cafeteria;
- (l) a cabaret;
- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;

(s) a waiting room; and

(t) any other place of business.

(5) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

~~[(5)]~~ (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

Section 13. Section **76-10-105 (Superseded 07/01/20)** is amended to read:

76-10-105 (Superseded 07/01/20). Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, prefilled electronic cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, prefilled electronic cigarette, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a fine or penalty, in accordance with Section 78A-6-117; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53G-4-402 may not issue a citation for a violation of this section committed on school property. A cited violation committed on school property shall be addressed in accordance with Section 53G-8-211.

Section 14. Section **76-10-105 (Effective 07/01/20)** is amended to read:

76-10-105 (Effective 07/01/20). Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile

591 **court jurisdiction.**

592 (1) (a) An individual who is 18 years or older, but younger than the age specified in
593 Subsection (1)(b), and buys or attempts to buy, accepts, or has in the individual's possession
594 any cigar, cigarette, electronic cigarette, prefilled electronic cigarette, or tobacco in any form is
595 guilty of an infraction and subject to:

596 (i) a minimum fine or penalty of \$60; and
597 (ii) participation in a court-approved tobacco education or cessation program, which
598 may include a participation fee.

599 (b) For purposes of Subsection (1)(a), the individual is younger than:

600 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
601 (ii) beginning July 1, 2021, 21 years old.

602 (2) An individual under the age of 18 who buys or attempts to buy, accepts, or has in
603 the individual's possession any cigar, cigarette, electronic cigarette, prefilled electronic
604 cigarette, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject
605 to Section 78A-6-602, unless the violation is committed on school property. If a violation
606 under this section is adjudicated under Section 78A-6-117, the minor may be subject to the
607 following:

608 (a) a fine or penalty, in accordance with Section 78A-6-117; and
609 (b) participation in a court-approved tobacco education program, which may include a
610 participation fee.

611 (3) A compliance officer appointed by a board of education under Section 53G-4-402
612 may not issue a citation for a violation of this section committed on school property. A cited
613 violation committed on school property shall be addressed in accordance with Section
614 53G-8-211.

615 (4) (a) This section does not apply to the purchase or possession of a cigar, cigarette,
616 electronic cigarette, prefilled electronic cigarette, tobacco, or tobacco paraphernalia by an
617 individual who is 18 years or older and is:

618 (i) on active duty in the United States Armed Forces; or
619 (ii) a spouse or dependent of an individual who is on active duty in the United States
620 Armed Forces.

621 (b) A valid, government-issued military identification card is required to verify proof

622 of age under Subsection (4)(a).

623 Section 15. **Effective date.**

624 (1) Except as provided in Subsections (2) and (3), if approved by two-thirds of all the
625 members elected to each house, this bill takes effect upon approval of the governor, or the day
626 following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the
627 governor's signature, or in the case of a veto, the date of veto override.

628 (2) The following sections take effect on May 12, 2020:

629 (a) the amendments to Sections 53F-9-304, 53G-7-1202, 53G-7-1205, 53G-10-405,
630 and 53G-10-406; and

631 (b) the enactment of Section 53G-10-407.

632 (3) The amendments to Section 76-10-105 (Effective 07/01/20) take effect on July 1,
633 2020.